

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LANGSTON GOSSETT, } No. C06-0441RSL

Plaintiff, )  
)  
) ORDER COMPELLING  
) PRODUCTION

THE CITY OF SEATTLE, *et al.*,

## Defendants.

This matter comes before the Court on “Defendants’ Motion for Protective Order Relating to IIS Files” (Dkt. # 19) and the “Submission of Seattle Police Department Internal Investigations [sic] Section Files for *In Camera* Review” (Dkt. # 31). Having reviewed the internal investigation section (“IIS”) files pertaining to Officers Knight and Miles, the Court finds as follows:

## (1) Relevance

Under the Federal Rules of Civil Procedure, the parties may obtain discovery regarding any matter that is “not privileged” and is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Plaintiff’s request for the IIS file related to plaintiff’s complaint seeks relevant information that bears on the issues in this case. The contemporaneous statements of the officers and witnesses, the identification of reviewing officers, and the findings and conclusions of the department may help establish or disprove the liability of the individual officers and/or ratification by the City. In addition, this information

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1 may also be used for impeachment purposes.

2 As noted in the Court's Order for *In Camera* Review (Dkt. # 30), plaintiff's  
3 request for IIS files unrelated to the events giving rise to this litigation was overbroad to the  
4 extent that it sought information regarding investigations that did not involve excessive force  
5 complaints. Having now reviewed all internal investigation section files related to or arising out  
6 of civilian complaints of excessive force against Officers Knight and Miles, the Court finds that  
7 only the file related to Mr. Gossett's complaint is "reasonably calculated to lead to the discovery  
8 of admissible evidence." Fed. R. Civ. P. 26(b)(1). The other complaint(s) were ultimately  
9 determined to be unfounded and do not tend to prove or disprove any element of plaintiff's  
10 claims.

11 **(2) Privilege and Fed. R. Ev. 407**

12 Defendants argue that, even if the factual portions of the file regarding this  
13 incident are discoverable, the evaluative portions are protected by an "official information  
14 privilege" and Fed. R. Ev. 407. Allowing a complainant full and fair access to the investigative  
15 file related to his or her own complaint is not likely to discourage citizens from providing  
16 information, to result in an unexpected or unjustified disclosure of information related to the  
17 officers involved, or to thwart the department's internal review processes. Nor is there reason in  
18 this case to believe that the production of the file will invade the privacy of third parties:  
19 plaintiff already knows the names of the witnesses contacted and any additional information  
20 regarding the nature of the internal review and the identities of reviewing officers is relevant and  
21 not unnecessarily intrusive. The Court finds that the governmental privilege discussed in Kelly  
22 v. City of San Jose, 114 F.R.D. 653 (N.D. Cal. 1987), and Frankenhauser v. Rizzo, 59 F.R.D.  
23 339 (E.D. Pa. 1973) (superseded by rule on other grounds), does not preclude discovery of the  
24 IIS file regarding plaintiff's complaint.

25 Defendants did not raise their Rule 407 objection in their motion for protective  
26 order and plaintiff has not had an opportunity to respond to that argument. Nevertheless, the

1 Court has reviewed the case law on which defendants rely and finds that the evaluative portions  
 2 of the file related to plaintiff's complaint (namely pages 17 and 75-77) are discoverable.  
 3 Maddox v. City of Los Angeles, 792 F.2d 1408, 1417 (9th Cir. 1986), involved an appeal of an  
 4 evidentiary ruling at trial, not a discovery dispute. In that context, the Ninth Circuit agreed with  
 5 the trial court's decision to exclude evidence regarding the measures the City took to discipline  
 6 an officer because such activities were subsequent remedial measures made inadmissible by  
 7 Rule 407. The admissibility of the evaluative portions of the internal investigation section file is  
 8 not currently before the Court: the only issue is its discoverability. Having determined that the  
 9 information is both relevant and not privileged,<sup>1</sup> the Court finds that production of the entire file  
 10 in discovery is appropriate.

11  
 12 For all of the foregoing reasons, defendants' motion for protective order is  
 13 GRANTED in part. Plaintiff is not entitled to copies of the investigative file(s) related to  
 14 civilian complaints lodged by third parties and may not pursue such information through  
 15 depositions, interrogatories, or other discovery methods. Defendants shall, however, serve on  
 16 plaintiff a copy of the internal investigation section file related to plaintiff's complaint within  
 17 five days of the date of this order. If defendants believe that personal information must be  
 18 redacted from the file pursuant to RCW 42.56.230(2),<sup>2</sup> they shall provide both plaintiff and the  
 19 Court with a redacted version of the file. This discovery is provided for purposes of this  
 20 litigation: neither party shall publish, use, or disseminate copies of this file except for purposes  
 21 of this litigation.

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 24 <sup>1</sup> The only other case cited by defendants in support of their remedial measures argument is  
Segura v. City of Reno, 116 F.R.D. 42 (D. Nev. 1987), in which the court found that the evaluative  
 25 summaries and recommendations regarding discipline were not relevant to the issues raised by plaintiff.  
 The district court did not rely on Rule 407 to limit discovery.

26 <sup>2</sup> The Court finds that RCW 10.97.010 *et seq.*, RCW 42.56.240, and RCW 70.02.010 *et seq.* do  
 not apply.

1 DATED this 31st day of August, 2006.  
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*Robert S. Lasnik*

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Robert S. Lasnik  
United States District Judge